

1 BENNETT ROLFE, CSB# 45844
Law Offices
2 BENNETT ROLFE & ASSOCIATES
545 West Avenue 28, Suite 201
3 Los Angeles, CA 90065
(323) 222-3059
4 (323) 222-3096 FAX

5 Attorneys for Plaintiff
NIKI JO CHERNEY
6

7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 NIKI JO CHERNEY,

11 Plaintiff,

12 vs.

13
14 BMAR & ASSOCIATES, INC., and DOES 1
through 10, inclusive,

15 Defendant.
16

CASE NO. 05 CV-00365 AWI- TAG

STIPULATION RE: AMENDMENT OF
COMPLAINT; ORDER
THEREON

17
18 The parties, by their respective attorneys, hereby stipulate and agree
19 that the Complaint in this matter, originally filed in the Superior Court of the State
20 of California for the County of Kern, a copy of which was attached to Defendant's
21 Notice of Removal, be amended as follows:

22
23 1. Striking from the Third Cause of Action of said Complaint the
24 words "as well as Section 8(a)(1)(3) of the National Labor Relations Act".

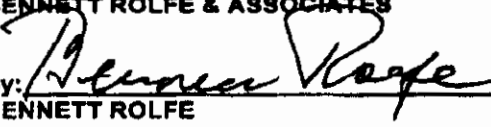
25 2. Adding thereto pages 10-13, inclusive (2nd page of Exhibit B and
26 Exhibits C, D & E), copies of which are attached hereto.

27
28 The parties further stipulate and agree that Defendant is not required

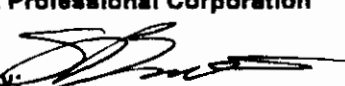
1 to file any further responsive pleading to the Complaint as so amended.

2
3 Respectfully submitted this 26th day May, 2005.

4
5
6 Law Offices
BENNETT ROLFE & ASSOCIATES

7 
8 By: Bennett Rolfe
9 BENNETT ROLFE
10 Attorneys for Plaintiff
11 NIKI JO CHERNEY

12 LITTLER MENDELSON
A Professional Corporation

13 
14 By: Shelline K. Bennett
15 SHELLINE K. BENNETT
16 Attorneys for Defendant
17 BMAR & Associates, Inc.

18 **ORDER**

19 Good cause appearing, it is so ordered.

20 Dated: May 27, 2005

21 
22 Theresa A. Faldut
23 United States Magistrate Judge
24
25
26
27
28

Notice of Case Closure
Page Two

10

The Department of Fair Employment and Housing does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Belinda De La Cruz

Belinda De La Cruz
District Administrator

cc: Case File


Director
Human Resources/Personnel
BMAR AND ASSOCIATES INC.
1249 East Ridgecrest Blvd.
Ridgecrest, CA 93555

Exhibit Bp2

DFEH-200-43 (04/03)

3

EEOC Form 6 (5/01)

CHARGE OF DISCRIMINATION		Charge Presented To: Agency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
		340-2005-00467	
State or local Agency, if any _____ and EEOC			
Name (Indicate Mr., Ms., Mrs.)		Home Phone No. (Indicate Area Code)	Date of Birth
Ms. Niki J. Cherney		(760) 375-5024	12-15-1946
Street Address		City, State and ZIP Code	
606 Beth Lane Ridgcrest, CA 93555			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name		No. Employees, Members	Phone No. (Include Area Code)
BMAR & ASSOCIATES, INC.		Unknown	(760) 375-9503
Street Address		City, State and ZIP Code	
1249 East Ridgcrest Boulevard, Ridgcrest, CA 93555			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es))		DATE(S) DISCRIMINATION TOOK PLACE	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below)		Earliest Latest 06-03-2004 06-03-2004 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
I. I was hired on July 2, 1985. I participated in an investigation regarding Richard Phillips, Coworker. I opposed the discriminatory treatment and harassment that Mr. Phillips was receiving. I was terminated on June 3, 2004. II. I was told that I was being terminated because I gave Mr. Phillips a copy of a delivery ticket. III. I believe that I have been retaliated against because of my association with Mr. Phillips, my opposition to discrimination and harassment, and participation in an investigation and terminated, in violation of Title VII of the Civil Rights Act of 1964, as amended.			
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> RECEIVED NOV 24 2004 EEOC/LADO </div>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
Nov 24, 2004 Date		SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
 Charging Party Signature			

EEOC Form 181 (2/99)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

12

To: Niki J. Cherney
695 Beth Lane
Ridgecrest, CA 93555

From: Los Angeles District Office
255 E Temple St., 4th Fl
Los Angeles, CA 90012

☐ On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

340-2005-00457

Legal Officer of the Day

(213) 894-1000

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Enclosure(s)

B. Nelson for
Ololphus E. Perry,
District Director

12/2/04
(Date Mailed)

cc: Marilyn White
Human Resources
BMAR & ASSOCIATES, INC.
2936-C Fort Campbell Blvd
P.O. Box 688
Hopkinsville, KY 42241

Bennett Roife
545 West Avenue 26
Suite #201
Los Angeles, CA 90065

Exhibit D

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STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
 (SEE ADDRESS CHECKED BELOW)


13

TTY / (800) 700-2320

☐ 1001 Tower Way, Suite 250
 Bakersfield, CA 93309
 H (805) 395-2728

 Ms. Marilyn White
 Human Resources
 BMAR & ASSOCIATES, INC
 2935-C Fort Campbell Blvd
 P.O. Box 688
 Hopkinsville, KY 42241

EEOC Number: 340-2005-00457

Case Name: Niki J. Cherney

Date: December 2, 2004

☐ 1320 E. Shaw Avenue, Suite 150
 Fresno, CA 93710
 C (559) 244-4780
NOTICE TO COMPLAINANT AND RESPONDENT
☐ 611 West Sixth Street, Suite 1500
 Los Angeles, CA 90017
 B (213) 438-6798

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

☐ 1515 Clay Street, Suite 701
 Oakland, CA 94612
 M (510) 822-2041

No response to the DFEH is required by the respondent.

☐ 2000 "O" Street, Suite 120
 Sacramento, CA 95814
 E (916) 445-5523

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

NOTICE TO COMPLAINANT OF RIGHT-TO-SUE
☐ 1350 Front Street, Suite 300S
 San Diego, CA 92101
 D (619) 845-2681

☐ 121 Spear Street, Suite 430
 San Francisco, CA 94103
 A (415) 304-2303

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior or Justice Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

☐ 111 North Market Street, Suite 970
 San Jose, CA 95113
 G (408) 277-1277

☐ 2101 East Fourth Street, Suite 255-B
 Santa Ana, CA 92705
 K (714) 558-4288

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,

Wanda J. Kirby
 WANDA J. KIRBY
 Deputy Director
 Enforcement Division

Exhibit E

DFEH-200-02 (01/04)

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